



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logics, Inc.

File: B-256171

Date: May 19, 1994

William J. White for the protester.
Vera Meza, Esq., and Kurt Didier, Esq., Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's decision to conduct procurement for critical military parts under noncompetitive procedures soliciting only known sources that have successfully manufactured the item (not the protester) was proper where the agency encountered a critical supply shortage.

DECISION

Logics, Inc. protests the award of contract No. DAAB07-94-C-J753 to LaBarge, Inc. by the United States Army Communications-Electronics Command (CECOM), for 20 rectifier and filter assemblies. Logics maintains that CECOM improperly awarded the contract under noncompetitive procedures.

We deny the protest.

The rectifier and filter assembly was procured for use with "Firefinder" radars used on various military aircraft. These radars locate enemy artillery and mortar fire and determine target location for return fire. The rectifier and filter assembly is a mission essential component of the radar; that is, a failure in the component renders the radar nonoperational. In a military campaign, a defective radar increases the probability of casualties due to the inability to locate enemy fire.

A restricted competition was conducted under the authority provided under 10 U.S.C. § 2304(c)(2) (1988) and Federal Acquisition Regulation (FAR) § 6.302-2, which authorize a restricted procurement where an unusual and compelling urgency precludes full and open competition and delay in

award of a contract would result in serious injury to the government. See FAR § 6.302-2(b). CECOM conducted the procurement in part because of a critical supply shortage caused by dilatory performance under a prior contract with Logics for 64 rectifier and filter assemblies.¹ There was a need to expeditiously satisfy urgent requirements created by the high priority military actions relating to Bosnia-Herzegovina, Somalia, and Kuwait.

Pursuant to the aforementioned authority, CECOM executed the necessary justification and approval (J&A) to purchase 20 rectifier and filter assemblies under other than full and open competition. The J&A was based on the urgency of the requirement and specified the minimum quantity required to accomplish a mission operational readiness rate of 96 percent, pending completion of a competitive procurement for the item. CECOM limited the competition to the only known successful manufacturers, Hughes Aircraft Corporation and LaBarge. On December 17, CECOM awarded LaBarge the contract for 20 rectifier and filter assemblies. Meanwhile, CECOM has initiated a separate, fully competitive procurement to satisfy its continuing requirements for the radar component.

Logics argues that the procurement violated the statutory requirement for full and open competition because CECOM allegedly lacked an adequate rationale to restrict the procurement and failed to obtain a proper J&A. Logics also asserts that CECOM violated various provisions of the FAR, including a requirement for publication in the Commerce Business Daily (CBD), in conducting the procurement.

An agency may, in appropriate circumstances, utilize noncompetitive procedures pursuant to the urgency exception, and when it does so it may restrict competition to the firms that it reasonably believes can perform the work promptly and properly. See Industrial Refrigeration Serv. Corp., B-220091, Jan. 22, 1986, 86-1 CPD ¶ 67. We will only object to such use of noncompetitive procedures where the agency has no rational basis for using them. See Servrite Int'l, Ltd., B-236606, Dec. 6, 1989, 89-2 CPD ¶ 520. In this regard, a military agency's assertion that there is a critical need having an impact on military operations carries considerable weight. Greenbrier Indus., Inc., B-241304, Jan. 30, 1991, 91-1 CPD ¶ 92.

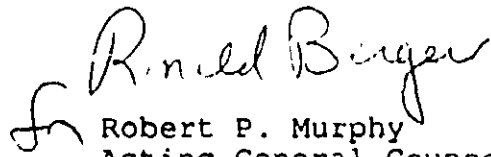
Based on our review of the record, we find that CECOM's award to LaBarge using noncompetitive procedures was

¹The record reflects that Logics has yet to meet the contract's first article requirements or make any deliveries under the contract.

reasonable. As discussed above, CECOM has an urgent need caused by current military demands for the radar part and Logics's failure to deliver under its prior contract. CECOM has also reasonably found that only currently successful manufacturers were capable of promptly meeting this urgent requirement because other sources would have to satisfy first article testing requirements. The agency reports that the limited competition without first article will save 7 to 9 months from contract award to first delivery. Despite being provided with the agency's explanation, Logics has failed to offer any evidence that suggests that CECOM's use of noncompetitive procedures was inappropriate. See Forster Enters., Inc., B-237910, Apr. 5, 1990, 90-1 CPD ¶ 363.

In addition, contrary to the protester's assertions, the record shows that CECOM executed a proper J&A that was approved by the appropriate agency official as required by the FAR. See FAR §§ 6.303-1, 6.303-2, 6.304. Moreover, where there is a proper determination to limit competition under 10 U.S.C. § 2304(c)(2), an agency is not required to publish notice of the solicitation in the CBD. See FAR § 5.202(a)(2); Vega Precision Lab., Inc., B-252586, July 9, 1993, 93-2 CPD ¶ 12.

The protest is denied.


Robert P. Murphy
Acting General Counsel